

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WHIRLPOOL CORPORATION, §
§
Plaintiff, § Civil Action No.
v. §
§ JURY TRIAL DEMANDED
DELTAFILL INCORPORATED and §
ONEPURIFY, LLC. §
§
Defendants. §

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Whirlpool Corporation (“Whirlpool”), and for its Complaint for Patent Infringement of United States Patent No. 7,000,894 against Defendants DeltaFill Incorporated and OnePurify, LLC, states as follows:

PARTIES

1. Plaintiff Whirlpool is a corporation organized and existing under the laws of the state of Delaware with a principal place of business at 2000 North M-63, Benton Harbor, Michigan.

2. Defendant DeltaFill Incorporated is a corporation organized and existing under the laws of the state of Texas. It is assigned File No. 0801459446 by the Texas Secretary of State and has a principal place of business at 15320 Park Row Dr., Houston, Texas 77084-2887.

3. OnePurify, LLC is a limited liability company organized and existing under the laws of the state of Texas. It is assigned File No. 0801896044 by the Texas Secretary of State and has a principal place of business at 15320 Park Row Dr., Houston, Texas 77084-2887.

JURISDICTION & VENUE

4. The action arises under the patent laws of the United States, Title 35 United States Code. The jurisdiction of this Court is proper under Title 35 U.S.C. § 271, *et seq.* and 28 U.S.C. §§ 1331, 1332, and 1338.

5. DeltaFill Incorporated and OnePurify, LLC (collectively, “DeltaFill”) is an importer, distributor, and seller of water filters for refrigerators.

6. DeltaFill has offered for sale and sold throughout the United States Whirlpool-compatible replacement water filters that infringe United States Patent No. 7,000,894, such as water filters bearing Model Nos. RFC1700A and RFC3700A, which are Whirlpool “Filter 1” designs, and water filters bearing Model Nos. RFC0800A and RFC3800A, which are Whirlpool “Filter 3” designs.

7. DeltaFill has offered for sale and sold Whirlpool-compatible refrigerator water filters that infringe U.S. Patent No. 7,000,894, such as Model Nos. RFC1700A, RFC3700A, RFC0800A, and RFC3800A filters, to residents and citizens of Texas who reside within this district.

8. The Court has personal jurisdiction over Defendants because Defendants DeltaFill Incorporated and OnePurify, LLC are both Texas companies with their principal place of business in Texas, and therefore, have continuous and systematic contacts with the State of Texas. Furthermore, Defendants have advertised for sale the infringing filters via the internet, in the state of Texas, including the Eastern District of Texas, and have offered for sale and sold the infringing products to customers in the state of Texas, including the Eastern District of Texas, thereby harming Whirlpool by offering to sell and/or selling infringing products in this district.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b) because Defendants DeltaFill Incorporated and OnePurify, LLC are both Texas companies and therefore reside in the State of Texas and in this judicial district. *See TC Heartland, LLC v. Kraft Foods Group Brands LLC*, --- S. Ct. ---, 2017 WL 2216934, No. 16-341 (May 22, 2017).

COUNT I

Infringement of U.S. Patent No. 7,000,894

10. Whirlpool restates and incorporates by reference paragraphs 1 through 9 as if fully stated herein.

11. On February 21, 2006, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 7,000,894 (“the ‘894 patent”) entitled “Fluidic Cartridges and End Pieces Thereof.” On March 3, 2014, the USPTO issued an ex parte reexamination certificate for the ‘894 patent. Appended as Exhibit A is a true and correct copy of the ‘894 patent, inclusive of the ex parte reexamination certificate.

12. Whirlpool is the owner by assignment of the entire right, title and interest in and to the ‘894 patent, including the right to sue and recover past, present, and future damages for infringement.

13. Whirlpool manufactures products that practice the ‘894 patent, including Whirlpool “Filter 1” and “Filter 3” refrigerator water filters, and marks such products with the ‘894 patent.

14. The validity and enforceability of the ‘894 patent has been recognized and acknowledged in Consent Judgments entered by this Court in the patent infringement cases captioned *Whirlpool Corporation v. Brauchla TV, Inc. d/b/a Brauchla TV & Appliance*, Civil Action No. 2:15-cv-2068 (Document 5); *Whirlpool Corporation v. National Trade Supply, LLC*,

Civil Action No. 2:15-cv-1701-JRG (Document 5); *Whirlpool Corporation v. Zipras, Inc.*, Civil Action No. 2:15-cv-1636-JRG (Document 7); *Whirlpool Corporation v. Air 1 Supply, Inc.*, Civil Action No. 2:15-cv-1640-JRG (Document 6), *Whirlpool Corporation v. Global Parts Supply, LLC d/b/a Pandora's OEM Appliance Parts*, Civil Action No. 2:15-cv-1563-JRG (Document 7); *Whirlpool Corporation v. JJ Wholesale Group Inc. d/b/a Bob's Filters and Joseph Spira*, Civil Action No. 2:15-cv-1565-JRG (Document 11); *Whirlpool Corporation v. Spectacular Products and William Long*, Civil Action No. 2:15-cv-86 consolidated with 2:15-cv-2103 (Document 20); *Whirlpool Corporation v. Dilmen, LLC d/b/a Coral Premium Water Filters and Huseyin Dilmen*, Civil Action No. 2:15-cv-1722 consolidated with 2:15-cv-2103 (Document 17); *Whirlpool Corporation v. Radiant Marketing, LLC d/b/a Clear Sip Water Filters*, Civil Action No. 2:15-cv-2101 consolidated with 2:15-cv-02103-JRG (Document 23); *Whirlpool Corporation v. Purenex, Inc.*, Civil Action No. 2:16-cv-028 consolidated with 2:15-cv-02103-JRG (Document 32); *Whirlpool Corporation v. iSpring Water Systems, LLC d/b/a 123Filter.com*, Civil Action No. 2:16-cv-107 consolidated with 2:15-cv-02103-JRG (Document 41-2); *Whirlpool Corporation v. Craft Appliances, Inc. and Brian Craft*, Civil Action No. 2:16-cv-084 consolidated with 2:15-cv-02103-JRG (Document 51); *Whirlpool Corporation v. Compatible Parts, LLC*, Civil Action No. 2:16-cv-445 (Document 9); *Whirlpool Corporation v. A&M Distribution, LLC, Aymeric Monello and Megan Grant*, Civil Action No. 2:16-cv-106 (Document 8); *Whirlpool Corporation v. DG Enterprises, LLC d/b/a Splash Filters*, Civil Action No. 2:16-cv-109 (Document 8); *Whirlpool Corporation v. PS Newby, LLC d/b/a Sylvia Water Purification*, Civil Action No. 2:16-cv-137 consolidated with 2:16-cv-565 (Document 7); *Whirlpool Corporation v. Arclyte Technologies, Inc.*, Civil Action No. 2:16-cv-138 (Document 8); *Whirlpool Corporation v. Pricebreak, Inc.*, Civil Action No. 2:16-cv-416 consolidated with

2:16-cv-565 (Document 7); *Whirlpool Corporation v. iSave.com, Inc.*, Civil Action No. 2:16-cv-418 (Document 7); *Whirlpool Corporation v. Crystal Rose Trading, Inc. d/b/a UltimatePurification USA*, Civil Action No. 2:16-cv-560 (Document 7); *Whirlpool Corporation v. Woodside Distributors, Inc.*, Civil Action No. 2:16-cv-565 (Document 7); *Whirlpool Corporation v. Blue Grizzly Supply, Inc.*, Civil Action No. 2:16-cv-585 consolidated with 2:16-cv-565 (Document 9); *Whirlpool Corporation v. Odoga Enterprises*, Civil Action No. 2:16-cv-685 consolidated with 2:16-cv-565 (Document 7); *Whirlpool Corporation v. Enow Wholesale, Inc.*, Civil Action No. 2:16-cv-737 (Document 24); *Whirlpool Corporation v. Brixton Holdings, LLC*, Civil Action No. 2:16-cv-822 (Document 9); *Whirlpool Corporation v. AWP Group, Inc. d/b/a Water Filters Fast*, Civil Action No. 2:16-cv-988 (Document 16); *Whirlpool Corporation v. Pavel Water Filtration, Inc. and Henry H. Pavel*, Civil Action No. 2:16-cv-146 consolidated with 2:15-cv-02103 (Document 143); and *Whirlpool Corporation v. Tianjin Jinghai Yunda Industry and Trade Co., Ltd.*, Civil Action No. 2:16-cv-229 consolidated with 2:15-cv-2103 (Document 146).

15. In violation of 35 U.S.C. § 271, DeltaFill directly infringes one or more claims of the ‘894 patent, including but not limited to claims 1 and 4, by making, using, selling and/or offering to sell in the United States or importing into the United States the infringing filters. DeltaFill literally infringes these claims of the ‘894 patent or does so under the doctrine of equivalents.

16. DeltaFill will continue to do so unless enjoined by this Court. As a direct and proximate result of DeltaFill’s direct infringement of the ‘894 patent, Whirlpool has been and continues to be damaged.

17. DeltaFill indirectly infringes, through induced and/or contributory infringement, the ‘894 patent. DeltaFill has had actual notice of the ‘894 patent. On information and belief, DeltaFill had prior knowledge of the ‘894 patent, such as through Whirlpool’s marking of Filter 1 and 3 products and DeltaFill’s procurement of its infringing RFC1700A, RFC3700A, RFC800A and RFC3800A refrigerator filters. Whirlpool also notified DeltaFill of its infringement of the ‘894 patent in correspondence dated February 16, 2017.

18. Despite DeltaFill’s notice of infringement, DeltaFill continues to make, use, import, sell and/or offer to sell and provide installation, operational support, and instructions for infringing filters, including with the knowledge or willful blindness that its conduct will induce DeltaFill customers to infringe the ‘894 patent, including advertising its infringing filters as replacements for Whirlpool filters. Through such activities, DeltaFill specifically intends that its customers directly infringe the ‘894 patent.

19. On information and belief, DeltaFill is contributorily infringing and will continue to contributorily infringe the ‘894 patent for the following reasons. DeltaFill has had actual notice of the ‘894 patent. On information and belief, DeltaFill had prior knowledge of the ‘894 patent, for instance, due to Whirlpool’s marking of Filter 1 and 3 products and DeltaFill’s procurement of its infringing products. Whirlpool also notified DeltaFill of its infringement of the ‘894 patent in correspondence dated February 16, 2017. DeltaFill provides to its customers, the direct infringers, the replacement filters, such as the RFC1700A, RFC3700A, RFC800A and RFC3800A filters, that lack substantial non-infringing uses and that lead to infringement when installed into refrigerators’ water filter assemblies. These infringing components are a material part of the installation of a replacement filter into the refrigerator’s water filter assembly, whose water filtering system would not function properly without them.

20. DeltaFill's infringement occurred with knowledge of the '894 patent and thus has been and will continue to be willful and deliberate. Whirlpool Filter 1 and 3 products have been marked to give competitors notice of the '894 patent, and Whirlpool specifically notified DeltaFill of its infringement of the '894 patent. On information and belief, DeltaFill sought to copy Whirlpool's patented Filter 1 and 3 designs. DeltaFill's egregious conduct constitutes willful and deliberate infringement, which entitles Whirlpool to enhanced damages under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Whirlpool respectfully requests the following relief:

1. A judgment that DeltaFill infringes the '894 patent;
2. A preliminary and permanent injunction preventing DeltaFill and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '894 patent;
3. A judgment that DeltaFill's infringement has been willful;
4. A ruling that this case is exceptional under 35 U.S.C. § 285;
5. A judgment and order requiring DeltaFill to pay Whirlpool damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of judgment, with an accounting, as needed, as well as treble damages for willful infringement under 35 U.S.C. § 285;
6. A judgment and order requiring DeltaFill to pay Whirlpool's attorney's fees and costs of this action (including all disbursements);

7. A judgment and order requiring DeltaFill to pay pre-judgment and post-judgment interest on damages awarded; and
8. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues appropriately triable by a jury.

Dated: June 26, 2017.

Respectfully submitted,

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